

## **APPENDIX F**

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
18 DHC 6

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

LARRY G. HOYLE, Attorney,

Defendant

CONSENT  
ORDER OF DISCIPLINE

THIS MATTER came on for consideration before a Hearing Panel of the Disciplinary Hearing Commission composed of Richard V. Bennett, Chair, and members Allison C. Tomberlin and Tyler B. Morris. Maria J. Brown and Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Alan M. Schneider represented Defendant, Larry G. Hoyle.

Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Hoyle has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the order of discipline. Hoyle freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Larry G. Hoyle (hereinafter "Defendant" or "Hoyle"), was admitted to the North Carolina State Bar on 23 March 1990 and was at all times referred to herein an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar, and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Hoyle was engaged in the practice of law in the State of North Carolina and maintained a law office in Gastonia, Gaston County, North Carolina.

4. Defendant represented T. Robinson in State v. Robinson, Gaston County nos. 12 CR 52347 and 12 CR 12684.

5. On 27 August 2013, Defendant requested that the court date in the Robinson case be continued to 11 October 2013.

6. The court date in the Robinson case was continued to 11 October 2013.

7. On 19 September 2013, Defendant submitted a written Designation of Secured Leave for the dates of 10 and 11 October 2013, pursuant to Rule 26 of the General Rules of Practice for the Superior and District Courts.

8. Rule 26 of the General Rules of Practice requires that secured leave designations be filed before any trial, hearing, or other matter has been regularly scheduled or noticed for a time during the designated secured leave period.

9. Because Defendant was scheduled to appear at a hearing on Robinson's behalf on 11 October 2013, Defendant's designation of secured leave for that date was not in compliance with Rule 26 of the General Rules of Practice.

10. On his Designation of Secured Leave, Defendant represented that no action or proceeding in which he had entered an appearance had been scheduled for hearing, trial, or other proceeding during the designated leave period.

11. The statement in Defendant's Designation of Secured Leave that no action or proceeding in which he had entered an appearance had been scheduled for hearing, trial, or other proceeding during the designated secured leave period was false, because the hearing in the Robinson matter was set for 11 October 2013, one of the dates Defendant designated for secured leave in the Designation of Secured Leave.

12. When Defendant indicated in the Designation of Secured Leave that there were no scheduled hearings, trials, or other proceedings in a case in which he had entered an appearance during the period he was designating, he knew the statement was false.

13. In a motion dated 9 October 2013 and filed 10 October 2013, Defendant moved to continue the 11 October 2013 court date in the Robinson matter.

14. Defendant's cited reason for filing the motion to continue was that he could not be present due to his secured leave.

15. N. Gomez ("Gomez") was the defendant in State v. Gomez, Gaston Co. file nos. 14 CR 060879 and 80.

16. On or about 11 June 2015, Assistant Public Defender Holden Clark was assigned to represent Gomez on his pending charges.

17. On or about 15 June 2015, Frederick M. Dow ("Dow"), a professional bondsman, executed a surety appearance bond in the amount of \$5,000.00 for Gomez in 14 CR 060879 and 80.

18. A hearing was scheduled in 14 CR 060879 and 80 for 27 July 2015.

19. Gomez failed to appear at the 27 July 2015 hearing.

20. As a result of Gomez's failure to appear, an order for his arrest was issued.

21. Gomez's failure to appear also resulted in the issuance of a Bond Forfeiture Notice to Gomez and Dow on 21 August 2015.

22. The notice indicated that, unless the forfeiture was set aside before 18 January 2016, it would become a final judgment enforceable against Gomez and Dow.

23. At some point after Dow received the notice of forfeiture, Dow contacted Defendant regarding Gomez.

24. Dow asked Defendant to strike the Order for Arrest and Order of Forfeiture issued against Gomez.

25. N.C. Gen. Stat. § 58-71-95 states a bail bondsman may not "suggest or advise the employment of, or name for employment any particular attorney to represent his principal."

26. On or about 5 January 2016, Defendant prepared a Motion and Order Striking Order for Arrest and Forfeiture & Rescheduling in 14 CR 060879 and 80.

27. Defendant signed the Motion and Order as counsel for Gomez.

28. Defendant presented the motion and proposed order to an Assistant District Attorney for his or her concurrence and presented the form to the court.

29. The court entered the order, thereby releasing Dow from the bond forfeiture.

30. At the time Defendant undertook the actions described in paragraphs 26-28, Defendant had not spoken to Gomez.

31. At the time Defendant undertook the actions described in paragraphs 26-28, Defendant did not represent Gomez.

32. Defendant's actions caused a new court date of 7 March 2016 to be set for Gomez.

33. Defendant had no communication with Gomez about the new court date.

34. Gomez failed to appear for the new court date.

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

#### CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Larry G. Hoyle, and the subject matter.

2. Defendant's conduct, as set out in the Findings of Fact above, has engaged in conduct constituting grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2), in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By asserting to the court in his Designation of Secured Leave form that he had no matters with hearings scheduled during the designated period, Defendant knowingly made a false statement of material fact to a tribunal in violation of Rule 3.3(a)(1) and engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);
- (b) By improperly designating 11 October 2013 as secured leave when a hearing was scheduled for that date, falsely certifying that no hearings had been scheduled, and then using his designation of secured leave as the basis for a continuance of the hearing, Defendant misused the designated leave process in a manner that was prejudicial to the administration of justice in violation of Rule 8.4(d);
- (c) By taking action in Gomez's case at Dow's request when he lacked authority to act on behalf of Gomez and in a manner inconsistent with ethical and legal requirements, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (d) By signing the Motion and Order Striking Order for Arrest and Forfeiture & Rescheduling as counsel for Gomez when he did not represent Gomez, Defendant engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c); and
- (e) By failing to inform Gomez of the new court date, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based on the foregoing Findings of Fact, the Conclusions of Law, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 34 above are reincorporated as if set forth herein.

2. Defendant has been practicing law for over 28 years.
3. In 2003, Defendant was admonished by the Grievance Committee of the North Carolina State Bar for failing to respond to a request for information from the State Bar.
4. In 2009, Defendant was censured by the Grievance Committee of the North Carolina State Bar for engaging in improper *ex parte* communication and making a misrepresentation to the court about the other party's consent to the matter before the court.
5. Defendant has not received any discipline in the intervening ten years.
6. Defendant was unaware of the restriction upon bail bondsmen imposed in N.C. Gen. Stat. § 58-71-95.
7. Defendant's misuse of the secured leave process and his improper action in the Gomez matter created potential significant harm to the administration of justice.

Based on the foregoing Findings of Fact, Conclusions of Law, Additional Findings Regarding Discipline, and with the consent of the parties, the Hearing Panel enters the following

#### CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1) of the Rules and Regulations of the State Bar and determines the following factors are applicable:
  - a. Negative impact of the Defendant's actions on the administration of justice; and
  - b. Acts of misrepresentation.
2. The Hearing Panel has carefully considered all the factors enumerated under 1B.0116(f)(2) and concludes that although acts of misrepresentation are present in this case, disbarment is not necessary in order to protect the public in this case.
3. The Hearing Panel has considered all of the factors enumerated in 1B.0116(f)(3) and concludes that the following factors are applicable:
  - a. Factor (A), Prior disciplinary offenses;
  - b. Factor (B), Remoteness of prior offenses;
  - c. Factor (G), Multiple offenses;
  - d. Factor (K), Cooperative attitude toward the disciplinary proceedings; and
  - e. Factor (S), Substantial degree of experience in the practice of law.

4. The Hearing Panel considered all of the disciplinary options available to it and, in particular, carefully evaluated the factors relating to the imposition of a suspension or stayed suspension. In light of all of the evidence, particularly the remoteness of Defendant's prior offenses and the isolated incidents at issue, the Hearing Panel concluded the protection of the public does not require suspension in this case and that a censure is the appropriate discipline.

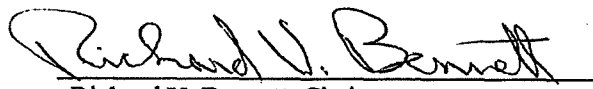
5. The Hearing Panel considered all lesser sanctions and concluded that discipline short of a censure would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to members of the Bar and the public regarding the conduct expected of members of the Bar of this State.

Based on the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE

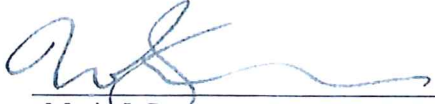
1. Defendant, Larry G. Hoyle, is hereby CENSURED.
2. Defendant shall pay the administrative fees and costs of this proceeding, including the costs of all depositions, as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary.

Signed by the Chair with the consent of the other Hearing Panel members, this the 31<sup>st</sup> day of January, 2019.

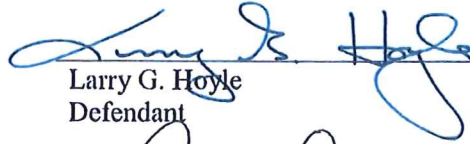
  
Richard V. Bennett, Chair  
Disciplinary Hearing Panel

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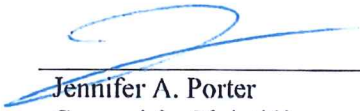
CONSENTED TO BY:



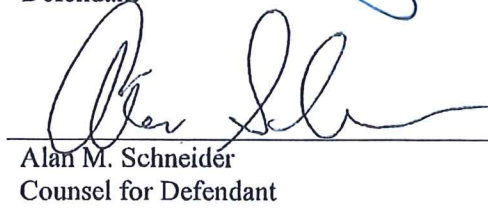
Maria J. Brown  
Counsel for Plaintiff



Larry G. Hoyle  
Defendant



Jennifer A. Porter  
Counsel for Plaintiff



Alan M. Schneider  
Counsel for Defendant